

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 2, 2010

Lyle W. Cayce
Clerk

No. 08-60112

Summary Calendar

ADOLFO HEREDIA-ARROYO,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A19 022 460

Before KING, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Adolfo Heredia-Arroyo (Heredia), a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (BIA). The BIA found Heredia ineligible for cancellation of removal because his 1997 Texas conviction of possession of marijuana constituted an aggravated felony for purposes of immigration law.

Because none of Heredia's Texas drug convictions were based upon the fact of a prior conviction, the BIA erred by determining that he had committed an

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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aggravated felony and that, as a result, he was ineligible for cancellation of removal. *See Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577, 2580 (2010). Heredia's petition for review is GRANTED. The order of the BIA is VACATED, and the case is REMANDED to allow him to pursue cancellation of removal in light of the Supreme Court's ruling in *Carachuri-Rosendo*.